

Council Policy

Councillors' Contact with Developers Policy

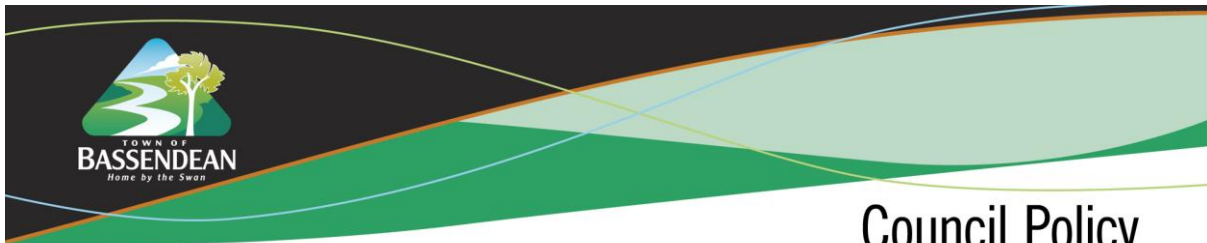
Objective

This Policy provides guidance on the recording of prescribed contact between Council Members and developers

Strategy

The role of Council in Town Planning is a vital one and the community and applicants should expect the highest standards of objectivity and transparency from all Councillors when dealing with development applications. The Department of Local Government and Communities provides a Guideline to Councillors with respect to their dealings with developers and it is expected that all councillors will familiarise themselves with this document. The following expectations of Councillors' behaviour in support of this policy have been extracted from that Guideline:

- *Any involvement that an elected member has with a development application during its assessment has the potential to damage the integrity of the final determination. It is therefore important that elected members refrain from public comments that could be construed as support or opposition of an application. Similarly, during the public comment period of a development application, elected members should not be seen to be trying to influence the public by commenting on the application or signing petitions.*
- *Lobbying on the merits and benefits of a proposal are all part of the healthy democratic process. However, problems arise when an elected member is lobbied to consider factors other than the relevant factors they should appropriately consider when determining the application as a decision-maker. Elected members need to understand the difference between appropriate and inappropriate lobbying and the risks associated if they fail to resist inappropriate lobbying.*
- *Elected members must not, when lobbied, commit their vote on the proposal. Members may offer support or otherwise but as decision-makers they are obliged to consider all relevant facts, including the debate at the meeting, prior to making their decision. Elected members who commit their vote may be faced with claims of perceived bias.*
- *The occasion may arise when two or more elected members are approached by a developer or applicant to meet in an informal manner to discuss the proposal and gauge their reaction to certain aspects of the development. Such meetings risk the independence of those elected members as impartial decision-makers and can lead to the developer or applicant adopting the view that what was agreed at the meeting had the approval of council. Modifications "agreed" to at such meetings can form part of the process for determining the application thus allowing for the impartiality of the elected members at the meeting to be questioned and hence the integrity of the final determination of council to be challenged.*



Information gained by the elected members at such meetings should be made available to the professional staff and other members as soon as practicable. To use such information in a way designed to compromise the debate or contradict staff reports would be improper and could jeopardise the eventual decision.

- *Elected members may wish to attend meetings between professional staff and developers. Attendance by members at such meetings could be considered highly inappropriate and entail an improper incursion by the elected members into the role of the Chief Executive Officer (CEO) and his or her professional staff. Approval of elected members attending such meetings needs to be at the discretion of the CEO as the CEO is best placed to determine whether their attendance compromises his or her legislative role of providing advice and information to council.*
- *Elected members should refuse an invitation they receive from developers to attend meetings between professional staff and the developer. Although the developer may suggest that it is an opportunity for them to see what the issues are and they may say little or nothing, the mere presence of an elected member puts implied pressure on staff and otherwise inhibits a free and frank discussion with the developer. The presence of elected members at such meetings may raise expectations on the part of the developer for approval and result in unnecessary later conflicts.*
- *The integrity of a local government will be improved where the role of the professional staff in assessing an application is clearly separated from the council's role of determining the application.*

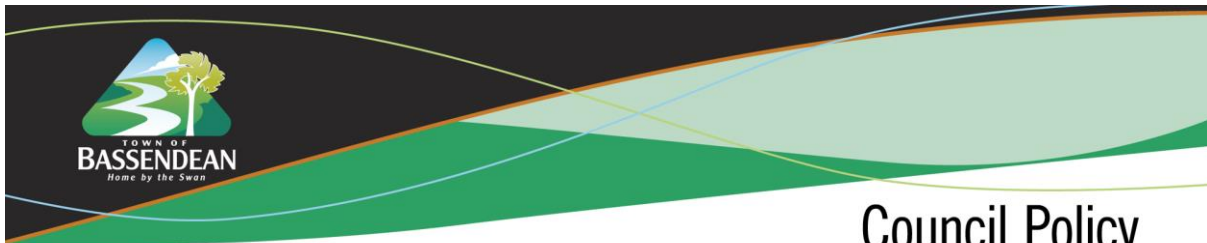
(Source: Local Government Operational Guidelines No. 12 – Elected Members' Relationship with Developers).

Definitions

Contact: Means any communication or conversation between a Council Member and Developer, regardless of whether it is foreseen, planned, solicited or reciprocated, and includes but is not limited to the following methods of communication – telephone, electronic mail (e-mail), short message service (SMS), multimedia messaging service (MMS), web-based networking platform, written mail, face-to-face and the like.

Developer: Means an individual, body corporate or company engaged in a business that:

- (a) regularly involves the making of relevant planning applications in connection with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit; and
- (b) includes any consultant, lobbyist, advisor, agent, representative or person closely associated with a Developer and who is appointed to promote or advocate for the Developer's interests or proposal.



Council Policy

(Derived from: *Election Funding, Expenditure and Disclosures Act 1981 (NSW)*, s.96GB)

Exempt Contact: Means any contact which:

- (i) is in the form of a public statement made at a Council Forum, Council Briefing or Council Meeting; or
- (ii) does not involve the Council Member engaging in any discussion or communication with the developer on the planning or development proposal.

Planning or Development Proposal: Means and includes:

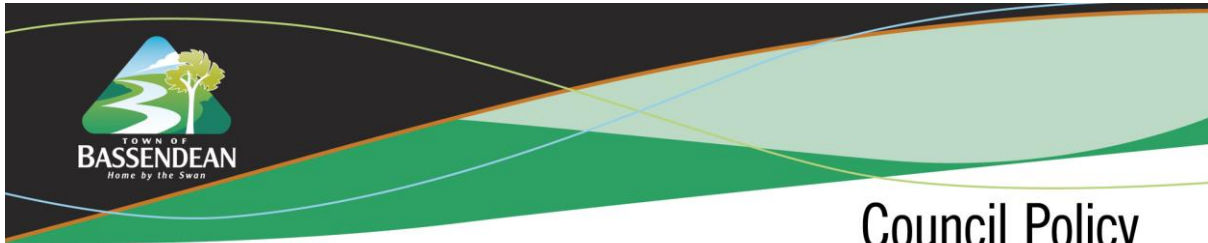
- (i) a proposed Local Planning Policy or amendment to a Local Planning Policy under the Town's operative Town Planning Scheme;
- (ii) a proposed amendment to the Town's operative Town Planning Scheme;
- (iii) an application under the Town's operative Town Planning Scheme or the Metropolitan Region Scheme for approval of the use or development of land and which is currently before or at the time of contact known to require determination by Council or the Joint Development Assessment Panel.

Prescribed Contact: Means any contact relating to a planning or development proposal, excluding any exempt contact.

Scope

1. Subject to clause 2 below, Council Members shall:

- (a) In writing, record every instance of Prescribed Contact with a developer by noting the:
 - Developer's name
 - Date and time of contact
 - Type of contact
 - Property or properties within the Town of Bassendean to which the contact related
 - Nature of the issue covered in the contact
 - Council Member response
- (b) Subject to sub-clause (c) below, not more than 7 days after contact with the Developer, provide to the Town's Chief Executive Officer the details referred to in sub-clause (a) above.



Council Policy

- (c) Where the Prescribed Contact occurs with a Council Member while he/she is on Approved Leave of Absence, then that Council Member shall provide the information referred to in sub-clause (a) above to the Town's Chief Executive Officer within 7 days of the last day of their Approved Leave of Absence.
- (d) Where Prescribed Contact occurs in the form of a group email or other correspondence to all Council Members, then the Office of the Mayor shall provide a copy of the same to the Chief Executive Officer for the purpose of compliance with clauses 2 and 3 below.
2. This Policy does not require Council Members to record contact defined as Exempt Contact. Notwithstanding, all written communication to and from Council Members relating to Council business is deemed to be a corporate record which may be accessible under the *Local Government Act 1995* and *Freedom of Information Act 1992*.
 3. The Chief Executive Officer shall create and thereafter maintain a register of all Council Member contact with Developers, incorporating the details referred to in sub-clauses 1(a) and (d) above. Such register shall be made publicly available in an electronic format on the Town's website.
 4. The Chief Executive Officer shall ensure the public register referred to in 3 above is updated on a monthly basis.

Application

Responsibility for the implementation of this policy rest with the Mayor, Councillors, Council delegates and Chief Executive Officer. The Policy is to be reviewed every three years.

(The Town acknowledges the use of content from the policy developed by the City of Vincent.)

<p>Policy Type: Strategic Policy</p> <p>Link to Strategic Community Plan: Leadership and Governance</p>	<p>Responsible Officer: Chief Executive Officer a</p> <p>Last Review Date:</p> <p>Version 1</p> <p>Next Review due by: May 2020</p>
---	---